

## SENATE BILL NO. 110

INTRODUCED BY COBB

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING CERTAIN RECOMMENDATIONS OF THE MONTANA PUBLIC HEALTH CARE REDESIGN PROJECT TO PROVIDE FOR IMPROVED COVERAGE OF THE HEALTH CARE AND RELATED NEEDS OF PARTICULAR GROUPS OF PERSONS; PROVIDING AUTHORITY FOR THE ESTABLISHMENT OF HEALTH INSURANCE FLEXIBILITY AND ACCOUNTABILITY DEMONSTRATION INITIATIVES AND OTHER DEMONSTRATION PROJECTS UPON APPROVAL OF WAIVER OF FEDERAL LAW; AMENDING SECTIONS 53-2-101 AND 53-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Montana public health care redesign project has studied health care and related services funded with state and federal money and has recommended the implementation of a set of measures to ensure that the expenditure of state and federal money more effectively benefits those citizens who are most in need of health care and other public assistance services; and

WHEREAS, the State of Montana has through the Montana public health care redesign project determined that the implementation of federally authorized health insurance flexibility and accountability (HIFA) demonstration initiatives or other demonstration projects under the waiver authority of section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315, is in the best interest of the citizens of Montana; and

WHEREAS, the section 1115 waiver is intended to foster more appropriate use of state general fund money and federal money in funding state-administered health care and related services; and

WHEREAS, the section 1115 waiver would allow for the expansion of coverage for children covered under Title XXI of the Social Security Act, 42 U.S.C. 1397aa, et seq., state children's health insurance program (CHIP), for the expansion of Medicaid coverage for children who cannot be covered through CHIP because of limits on enrollment, for the implementation of new programs of assistance to a significant number of persons in Montana who are chronically unable to obtain health insurance coverage, and for improvements in the funding for and delivery of certain health care services, such as prescription drugs and mental health services to specific populations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 53-2-101, MCA, is amended to read:

**"53-2-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(2) "Needy person" is one who is eligible for public assistance under the laws of this state.

(3) "Protective services" means services to children and adults to be provided by the department as permitted by Titles 41 and 53.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(5) "Section 1115 waiver" means an experimental, pilot, research, or demonstration project, subject to approval by the secretary of the U.S. department of health and human services, authorized by section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315, for which certain requirements of the Social Security Act are waived.

(6) "Section 1915 waiver" means a waiver of certain medicaid requirements subject to approval by the secretary of the U.S. department of health and human services, under section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, for the purposes of managing health care through restrictions on access to providers or for establishing programs of home- and community-based services."

**Section 2.** Section 53-4-601, MCA, is amended to read:

**"53-4-601. Demonstration project -- purpose.** (1) The department is authorized to administer a demonstration project pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, to provide assistance under Title IV of that act, 42 U.S.C. 601, et seq., to families who are currently receiving, eligible for, or at risk of becoming eligible for financial assistance. This demonstration project may be cited as the families achieving independence in Montana (FAIM) project.

(2) The purpose of the demonstration project is to promote self-sufficiency and responsibility of participants by providing supports and incentives, such as child-care assistance, training, education, medical assistance, and resource referrals, and to make procedures and requirements less complex and more uniform

1 in the financial assistance, food stamp, and medicaid programs.

2 (3) The department is authorized, in accordance with the provisions of [section 3], to amend the  
3 demonstration project authorized under 53-6-101 and this part to expand the demonstration project to implement  
4 the purposes authorized in [section 3]."  
5

6 **NEW SECTION. Section 3. Social Security Act section 1115 waiver.** (1) The department may  
7 pursue approval from the U.S. department of health and human services for implementation in Montana of a  
8 health insurance flexibility and accountability demonstration initiative and other demonstration projects through  
9 section 1115 waivers.

10 (2) The department may implement a demonstration project upon approval of a section 1115 waiver  
11 by the U.S. department of health and human services. The department may:

12 (a) coordinate a demonstration project with a program approved through a section 1915 waiver; or

13 (b) terminate and subsume in a new section 1115 waiver an existing MANAGED CARE OR ACCESS program  
14 approved through a section ~~4945~~ 1915(B) waiver, an optional state plan medicaid service authorized under  
15 53-6-101, an optional state plan eligibility group authorized under 53-6-131, or an existing program approved  
16 by a section 1115 waiver, inclusive of the demonstration program authorized by 53-4-202 and Title 53, chapter  
17 4, part 6, that is administered by the department.

18 (3) The department may amend the existing section 1115 demonstration project authorized in 53-4-601  
19 and 53-6-101 to expand the demonstration project to implement the purposes of this section.

20 (4) The department may initiate and administer section 1115 waivers to more efficiently apply available  
21 state general fund money, other available state and local public and private funding, and federal money to the  
22 development and maintenance of medicaid-funded programs of health services and of other public assistance  
23 services and to structure those programs or services for more efficient and effective delivery to specific  
24 populations.

25 (5) (A) In establishing programs or services in a demonstration project approved through a section 1115  
26 waiver, the department shall administer the expenditures under each demonstration project within the state  
27 spending authority that is available for that demonstration project. The department may limit enrollments in each  
28 program within a demonstration project, reduce the per capita expenditures available to enrollees, and modify  
29 and reduce the types and amounts of services available through each program when the department determines  
30 that expenditures can be reasonably expected to exceed the available state spending authority.

1           (B) THE DEPARTMENT SHALL DEVELOP A CONTINGENCY PLAN IF THERE IS A SPENDING CAP AS A CONDITION OF  
2   THE WAIVER AND THE SPENDING CAP IS EXCEEDED. THE CONTINGENCY PLAN MUST ADDRESS THE EFFECTS ON NEW  
3   PROGRAMS, SERVICES, OR ELIGIBILITY GROUPS.

4           (6) The department may coordinate the state children's health insurance program authorized under Title  
5   53, chapter 4, part 10, with a section 1115 waiver for the purpose of increasing the state funding match available  
6   under the waiver and expanding the number of participants in the state children's health insurance program.

7           (7) The department, subject to the terms and conditions of the section 1115 waiver:

8           [(a) shall establish the eligibility groups based upon the funding principles stated in [LC 281];]

9           (b) may provide medicaid coverage for one or more optional medicaid eligibility groups;

10          (c) may provide medicaid coverage for one or more specific populations of persons who are not within  
11   the federally authorized medicaid eligibility groups but who are within the requirements of subsection (8);

12          (d) may establish the service coverage, eligibility requirements, financial participation requirements, and  
13   other features for the administration and delivery of services to each section 1115 waiver eligibility group;

14          (e) shall set limits on the number of participants for each section 1115 waiver eligibility group;

15          (f) shall set limits on the total expenditures under each demonstration project; and

16          (g) shall set the limits on the total expenditures on the services to be provided to each section 1115  
17   waiver eligibility group.

18          (8) The categories of persons that the department may consider for establishment as a section 1115  
19   waiver eligibility group include but are not limited to:

20          (a) low-income parents of children who are eligible to participate in medicaid under 53-6-131 or in the  
21   state children's health insurance program authorized under Title 53, chapter 4, part 10;

22          (b) persons who because of low income and health-care needs are unable to procure health insurance  
23   coverage and are eligible to participate in a comprehensive health association plan authorized under Title 33,  
24   chapter 22, part 15;

25          (c) children who, because of limits on enrollment, may not be covered through the state children's health  
26   insurance program authorized under Title 53, chapter 4, part 10;

27          (d) children who are eligible to participate in the state children's health insurance program authorized  
28   under Title 53, chapter 4, part 10; and

29          (e) other specific groups of persons who are participants in programs or services funded solely or  
30   primarily through state general funds or who the department determines are in need of specific types of health

1 care and related services, such as prescription drugs, reproductive health care, and mental health services, and  
2 are without adequate financial means to procure health insurance coverage of those needs.

3 (9) Children participating in a section 1115 waiver eligibility group or children who would be eligible to  
4 participate in the state children's health insurance program are subject to the eligibility criteria applicable under  
5 53-4-1004, except as provided in subsection (10) of this section, for participation in the state children's health  
6 insurance program and must receive benefits as provided through the state children's health insurance program  
7 under 53-4-1005.

8 (10) (a) Except as provided in this subsection (10), the eligibility for the section 1115 waiver eligibility  
9 groups may not exceed 150% of the federal poverty level.

10 (b) The department may establish eligibility at greater than 150% but no more than 200% of the federal  
11 poverty level for any of the following groups established for purposes of a section 1115 waiver:

12 (i) participants in the state children's health insurance program;

13 (ii) participants in a group that may be covered under the state children's health insurance program;

14 (iii) participants in a family planning program;

15 (iv) participants in a group composed of persons previously served through a program funded with state  
16 general fund money and other nonmedicaid money; or

17 (v) participants in a group composed of persons with a significant need for particular services that are  
18 not readily available to that population through insurance products or because of personal financial limitations.

19 (c) In establishing the eligibility criteria based upon federal poverty levels, the department shall select  
20 levels to ensure that the resulting expenditures will remain within the available funding and will conform with the  
21 terms and conditions of approval by the U.S. department of health and human services.

22 (d) The department may adopt additional programmatic and financial eligibility criteria for a section 1115  
23 waiver eligibility group in order to appropriately define the subject population, to limit use for fiscal and  
24 programmatic purposes, to prevent improper use, and to conform the administration of the program with the  
25 terms and conditions of the section 1115 waiver.

26 (e) Eligibility criteria applicable to a section 1115 waiver eligibility group need not conform to the criteria  
27 applicable to another section 1115 waiver eligibility group or to a medicaid eligibility group that is not  
28 encompassed within the demonstration project.

29 (11) (a) For each section 1115 waiver eligibility group, the department shall establish the program  
30 benefit or benefits to be available to the participants in the group.

1 (b) Program benefits may be in the form of:

2 (i) assistance in the payment of health insurance premiums for health care coverage through an  
3 employer or other existing group coverage available to the program enrollee;

4 (ii) assistance in the payment of health insurance premiums for health care coverage that meets a set  
5 of defined standards and limitations adopted by the department in consultation with the commissioner of  
6 insurance and obtained from participating private insurers or through self-insured pools;

7 (iii) premium purchase for insurance coverage on behalf of children who are 18 years of age or younger  
8 for the defined set of health care and related services adopted by the department for the state children's health  
9 insurance program authorized in Title 53, chapter 4, part 10; or

10 (iv) coverage of a defined set of health care and related services administered directly by the department  
11 on a fee-for-service basis.

12 (c) The department may limit the types of program benefits available to enrollees in a program. For  
13 programs in which the department provides for more than one type of program benefit, the department may  
14 require that enrollees, either as a whole or on an individual basis based on certain circumstances, use certain  
15 types of program benefits in lieu of using other types of program benefits.

16 (d) The department shall, as necessary to maintain expenditures for a program within the available  
17 funding for that program, set monetary limitations on the total benefit amounts available on a periodic basis for  
18 an enrollee through that program, whether that benefit is in the form of premium assistance, premium purchase,  
19 or a set of covered services.

20 (12) The benefits for a section 1115 waiver eligibility group may be in the form of a defined set of  
21 covered services consisting of one or more of the mandatory and optional medicaid state plan services specified  
22 in 53-6-101 or other health-care related services. The department may select the types of services that constitute  
23 a defined set of covered services for a section 1115 waiver eligibility group. The department may provide  
24 coverage of a service not specified in 53-6-101 if the department determines the service to be appropriate for  
25 the particular section 1115 waiver eligibility group. The department may define the nature, components, scope,  
26 amount, and duration of each covered service to be made available to a section 1115 waiver eligibility group.  
27 The nature, components, scope, amount, and duration of a covered service made available to a section 1115  
28 waiver eligibility group need not conform to those aspects of that service as defined by the department for  
29 delivery as a covered service to another section 1115 waiver eligibility group or to a medicaid eligibility group  
30 that is not encompassed within a section 1115 waiver.

(13) The department may adopt financial participation requirements for enrollees in a section 1115 eligibility group to foster appropriate use among enrollees and to maintain the fiscal accountability of the program. The department may adopt financial participation requirements, including but not limited to copayments, payment of monthly or yearly enrollment fees, or deductibles. The requirements may vary among the section 1115 waiver eligibility groups. IN ADOPTING FINANCIAL PARTICIPATION REQUIREMENTS FOR ENROLLEES SELECTING COVERAGE AS PROVIDED IN SUBSECTION (11)(B)(IV), THE DEPARTMENT MAY NOT ADOPT COST-SHARING AMOUNTS THAT EXCEED THE NOMINAL DEDUCTIBLE, COINSURANCE, COPAYMENT, OR SIMILAR CHARGES ADOPTED BY THE DEPARTMENT TO APPLY TO CATEGORICALLY OR MEDICALLY NEEDY PERSONS FOR A SERVICE PURSUANT TO THE STATE MEDICAID PLAN.

(14) The department shall adopt rules as necessary for the implementation of a section 1115 waiver. Rules may include but are not limited to:

- (a) designation of programs and activities for implementation of a section 1115 waiver;
- (b) features and benefit coverage of the programs;
- (c) the nature, components, scope, amount, and duration of each program service;
- (d) appropriate insurance products and coverage as benefits;
- (e) required enrollee eligibility information;
- (f) enrollee eligibility categories, criteria, requirements, and related measures;
- (g) limits upon enrollment;
- (h) requirements and limitations for service costs and expenditures;
- (i) measures to ensure the appropriateness and quality of services to be delivered;
- (j) provider requirements and reimbursement;
- (k) financial participation requirements for enrollees;
- (l) use measures; and
- (m) other appropriate provisions necessary for administration of a demonstration project and for implementation of the conditions placed upon approval of a section 1115 waiver by the U.S. department of health and human services.

(15) The department shall administer the programs and activities that are subject to a section 1115 waiver in accordance with the terms and conditions of approval by the U.S. department of health and human services. The department may modify aspects of established programs and activities administered by the department as may be necessary to implement a section 1115 waiver as provided in this section.

1 (16) The department may seek an initial duration and durational extensions for a section 1115 waiver  
2 as the department determines appropriate for demonstration and fiscal considerations.

3 (17) The department shall provide a report to the legislature, as provided in 5-11-210, on the conditions  
4 of approval and the status of implementation for each section 1115 waiver approved by the U.S. department of  
5 health and human services. For any proposed section 1115 waiver not approved by the U.S. department of  
6 health and human services, the department shall provide to the next legislative session a report on the basis  
7 for disapproval and an analysis of the fiscal costs and programmatic impacts of serving the persons within the  
8 proposed section 1115 waiver eligibility groups through eligibility under one of the optional medicaid eligibility  
9 categories established in federal law and authorized by 53-6-131.

10 (18) THE DEPARTMENT SHALL PRESENT A SECTION 1115 WAIVER PROPOSAL TO THE APPROPRIATE MEDICAID  
11 ADVISORY COUNCIL, WHICH MUST INCLUDE CONSUMER ADVOCATES, PRIOR TO THE SUBMISSION OF THE PROPOSAL TO THE  
12 FEDERAL GOVERNMENT.

13 ~~(18)~~(19) THE DEPARTMENT SHALL PRESENT A SECTION 1115 WAIVER PROPOSAL TO THE HOUSE  
14 APPROPRIATIONS COMMITTEE OR, DURING THE INTERIM, THE ~~LEGISLATIVE FINANCE COMMITTEE~~ CHILDREN, FAMILIES,  
15 HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE FOR REVIEW AND COMMENT AT A PUBLIC HEARING PRIOR TO THE  
16 SUBMISSION OF THE PROPOSAL TO THE FEDERAL GOVERNMENT FOR FORMAL APPROVAL AND SHALL ALSO PRESENT THE  
17 SECTION 1115 WAIVER AFTER FINAL APPROVAL FROM THE FEDERAL GOVERNMENT.

18 ~~(19)~~(20) (A) THE DEPARTMENT SHALL PROVIDE FOR A PUBLIC COMMENT PERIOD ON THE PROPOSED SECTION  
19 1115 WAIVER AT LEAST 60 DAYS BEFORE THE SUBMISSION OF THE SECTION 1115 WAIVER APPLICATION TO THE FEDERAL  
20 GOVERNMENT FOR FORMAL APPROVAL.

21 (B) THE DEPARTMENT SHALL GIVE NOTICE OF THE PROPOSAL BY ANNOUNCING THE PENDING SUBMITTAL, STATING  
22 ITS GENERAL PURPOSE, AND INFORMING THE PUBLIC THAT A SYNOPSIS OF INFORMATION ON THE PROPOSAL IS AVAILABLE  
23 ON THE DEPARTMENT'S WEBSITE ~~AND~~.

24 (C) THE DEPARTMENT SHALL PROVIDE FOR PUBLIC COMMENT THROUGH ELECTRONIC MEANS OR MAIL AND SHALL  
25 PROVIDE FOR A PUBLIC FORUM IN AT LEAST ONE LOCATION AT WHICH MEMBERS OF THE PUBLIC CAN SUBMIT VIEWS ON THE  
26 PROPOSAL. THE DEPARTMENT SHALL CONSIDER COMMENTS RECEIVED AND MAKE ANY APPROPRIATE CHANGES TO THE  
27 WAIVER REQUEST BEFORE SUBMITTING IT TO THE FEDERAL GOVERNMENT.

28 (D) THE DEPARTMENT SHALL POST ON ITS WEBSITE THE WAIVER CONCEPT PAPER, FORMAL CORRESPONDENCE  
29 REGARDING A WAIVER PROPOSAL, AND THE FINAL APPROVED WAIVER, INCLUDING DOCUMENTS RECEIVED FROM THE  
30 CENTER FOR MEDICARE AND MEDICAID SERVICES.



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2 NEW SECTION. **Section 4. Codification instruction.** [Section 3] is intended to be codified as an

3 integral part of Title 53, chapter 2, part 2, and the provisions of Title 53, chapter 2, part 2, apply to [section 3].

5            COORDINATION SECTION. **Section 5. Coordination instruction.** If \_\_\_\_ Bill No. \_\_\_\_ [LC 281] is not  
6   passed and approved, then the bracketed language in [section 3] is void.

8            NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are  
9            severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
10           the part remains in effect in all valid applications that are severable from the invalid applications.

12 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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